

RECEIVED DEC 27 1994

BEFORE THE BUREAU OF OCCUPATIONAL LICENSES

HEARING AID DEALERS & FITTERS

ORIGINAL

In the Matter of the License of:)	Case No. B-94-212-06
)	
Kenneth Davis)	CONSENT ORDER
License No. H-170)	
)	
Respondent.)	
_____)	

COME NOW the Idaho State Board of Hearing Aid Dealers & Fitters (hereinafter "Board") and Kenneth Davis (hereinafter "Respondent"), and enter into this Consent Order in lieu of a formal administrative hearing pursuant to Idaho Code § 67-524, for the adjudication of the allegations delineated below in Section I.

I.

For the purposes of the entry of this order, the following facts are hereby adopted by the Board.

1. The Board is empowered by Idaho Code § 54-2914 to enforce the provisions of the Hearing Aid Dealers & Fitters Act, codified at title 54, chapter 29, Idaho Code.

2. Respondent was at all times relevant to this complaint licensed by the Board under license number H-170 to engage in the practice of fitting, dispensing and selling hearing aids in the state of Idaho.

3. Respondent's license to practice as a hearing aid dealer and fitter in the state of Idaho was cancelled on approximately July 20, 1994.

4. Respondent's right to be licensed as a hearing aid dealer and fitter in the state of Idaho is subject to his compliance with the laws of the Board as the same are codified at title 65, chapter 29, Idaho Code, and the rules of the Board, promulgated at IDAPA 24.06.01.

5. That on approximately April 12, 1993, Respondent administered to Douglas Schrank a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Douglas Schrank for the sale of two Otosonic hearing aids for the sum of \$1,218.00.

a. That Respondent's sale of a hearing aid to Douglas Schrank constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Douglas Schrank on April 12, 1993, for the sale of two hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Douglas Schrank in violation of Idaho Code § 54-2912(b)(11).

6. That on approximately June 1, 1993, Respondent administered to Truman Clark a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Truman Clark for the sale of one Otosonic hearing aid for the sum of \$623.00.

a. That Respondent's sale of a hearing aid to Truman Clark constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Truman Clark on June 1, 1993, for the sale of one hearing aid failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aid ordered by Truman Clark within thirty (30) days of the date the contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Truman Clark in violation of Idaho Code § 54-2912(b)(11).

7. That on approximately August 2, 1993, Respondent administered to Harvey Tate a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Harvey Tate for the sale of one Otosonic all-in-the-ear aid for the sum of \$559.00.

a. That Respondent's sale of a hearing aid to Harvey Tate constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Harvey Tate on August 2, 1993, for the sale of one hearing aid failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aid ordered by Harvey Tate within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Harvey Tate in violation of Idaho Code § 54-2912(b)(11).

8. That on approximately September 10, 1994, Respondent administered to Waldo Martens a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Waldo Martens for the sale of two Otosonic hearing aids for the sum of \$1,238.00.

a. That Respondent's sale of a hearing aid to Waldo Martens constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Waldo Martens on September 10, 1993, for the sale of two Otosonic brand hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aids ordered by Waldo Martens within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Waldo Martens in violation of Idaho Code § 54-2912(b)(11).

9. That on approximately September 14, 1993, Respondent administered to Vern Givens a hearing and evaluation and based upon the result of that evaluation, executed a contract with Vern Givens for the sale of two Otosonic all-in-the-ear hearing aid for the sum of \$902.40.

a. That Respondent's sale of a hearing aid to Vern Givens constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary

tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Vern Givens on September 14, 1993, for the sale of two hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aids ordered by Vern Givens within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Vern Givens in violation of Idaho Code § 54-2912(b)(11).

10. That on approximately October 15, 1993, Respondent administered to Charlie Kiser a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Charlie Kiser for the sale of one Otosonic all-in-the-ear hearing aid for the sum of \$382.00.

a. That Respondent's sale of a hearing aid to Charlie Kiser constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Charlie Kiser on October 15, 1993, for the sale of one hearing aid failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aids ordered by Charlie Kiser within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Charlie Kiser in violation of Idaho Code § 54-2912(b)(11).

11. That on approximately January 6, 1994, Respondent administered to Larry Golay a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Larry Golay for the sale of one hearing aid for the sum of \$639.00.

a. That Respondent's sale of a hearing aid to Larry Golay constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Larry Golay on January 6, 1994, for the sale of one hearing aid failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aid ordered by Larry Golay within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Larry Golay in violation of Idaho Code § 54-2912(b)(11).

12. That on approximately February 10, 1994, Respondent administered to Jim Abshire a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Jim Abshire for the sale of two canal hearing aids for the sum of \$850.00.

a. That Respondent's sale of hearing aids to Jim Abshire constitutes fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Jim Abshire on February 10, 1994, for the sale of two hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aid ordered by Jim Abshire within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Jim Abshire in violation of Idaho Code § 54-2912(b)(11).

13. That on approximately February 24, 1994, Respondent administered to Mary Eldredge a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Mary Eldredge for the sale of two deep canal hearing aids for the sum of \$920.00.

a. That Respondent's sale of a hearing aids to Mary Eldredge constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Mary Eldredge on February 24, 1994, for the sale of two deep canal hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aid ordered by Mary Eldredge within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 54-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Mary Eldredge in violation of Idaho Code § 54-2912(b)(11).

14. That on approximately July 15, 1991, Respondent administered to Forest Perkins a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Forest Perkins for the sale of two rechargeable Magnatone Hearing Aids for the sum of approximately \$1,200.00.

a. That Respondent's sale of a hearing aid to Forest Perkins constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Forest Perkins on July 15, 1991, for the sale of two hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to deliver the hearing aids ordered by Forest Perkins within thirty (30) days of the date the written contract was signed in violation of Idaho Code §§ 56-2912(b)(13) and 54-2903.

d. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Forest Perkins in violation of Idaho Code § 54-2912(b)(11).

15. That on approximately June 13, 1991, Respondent administered to Lawrence Nafus a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Lawrence Nafus for the sale of two DR Rechargeable hearing aids for the sum of \$1,034.88.

a. That Respondent's sale of hearing aids to Lawrence Nafus constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary

tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Lawrence Nafus in violation of Idaho Code § 54-2912(11).

16. That on approximately January 13, 1993, Respondent administered to Lawrence Nafus a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Lawrence Nafus for the sale of two rebuilt No. DR 14648, 14647 hearing aids for the sum of \$300.00.

a. That Respondent's sale of hearing aids to Lawrence Nafus constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Lawrence Nafus on June 13, 1991, for the sale of two rebuilt No. DR 14648, 14647 hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Lawrence Nafus in violation of Idaho Code § 54-2912(11).

17. That on approximately January 18, 1994, Respondent administered to Lawrence Nafus a hearing aid evaluation and based upon the results of that evaluation, executed a contract with Lawrence Nafus for the sale of two Alpha Tech Canal hearing aids for the sum of \$875.00.

a. That Respondent's sale of hearing aids to Lawrence Nafus constitutes the fitting or dealing of hearing aids to a person who has not been given all necessary

tests utilizing appropriate, established procedures and instrumentation in violation of Idaho Code § 54-2912(b)(5).

b. That the contract Respondent executed with Lawrence Nafus on June 13, 1991, for the sale of two Alpha Tech Canal hearing aids failed to conform to the contract requirements of Idaho Code § 54-2903 and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(13).

c. That Respondent failed to provide refunds pursuant to the terms of the written contract Respondent entered into with Lawrence Nafus in violation of Idaho Code § 54-2912(11).

18. That Respondent's sales of hearing aids to Truman Clark, Waldo Martens, Jim Abshire, Harvey Tate, Douglas Shrank, Forest Perkins, Charlie Kaiser, Larry Golay, Vern Givens, Mary Eldredge and Lawrence Nafus constitutes a pattern or practice of improper fitting and selling hearing aids, in violation of Idaho Code § 54-2901(i) and is grounds for discipline by the Board pursuant to Idaho Code § 54-2912(b)(6).

II.

I, Kenneth Davis, by affixing my signature thereto, acknowledge that:

1. I have read and understand the allegations pending before the Board, as stated in Section I. I further understand that these allegations constitute cause for disciplinary action upon my license to engage in the practice of fitting, dispensing and selling hearing aids in the state of Idaho.

2. I understand that I have the right to a full and complete hearing; and all rights accorded to me by the Administrative Procedure Act of the state of Idaho and the law and rules governing the practice of fitting, dispensing and selling hearing aids in the state of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this consent order as a resolution of the pending allegations against me.

3. I do not admit to the alleged violations as stated above in Section I, but specifically waive my right to contest the same for the resolution of this matter.

4. I understand that this Consent Order will not become effective unless adopted by the Board.

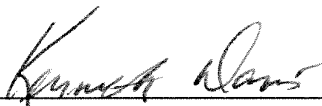
5. I understand that in signing this Consent Order I am enabling the Board to impose disciplinary action upon my license without further process.

III.

Based upon the foregoing stipulation, it is agreed that Respondent's right to reinstate his license to practice as a hearing aid dealer and fitter in the state of Idaho shall be revoked for a period of six (6) years from the effective date of this order.

I have read the above stipulation fully and I understand that by its terms I will be waiving certain rights accorded to me under Idaho law. I also understand that by its terms the Idaho State Board of Hearing Aid Dealers and Fitters will issue an Order whereby my license to sell, dispense, and fit hearing aids in the state of Idaho shall be revoked. I hereby agree to the above Consent Order for settlement.

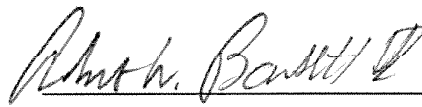
DATED this 27th day of December, 1994.



Kenneth Davis
Respondent

I concur in the stipulation and order.

DATED this 27th day of December, 1994.



Robert W. Bartlett, II.
Attorney for Respondent

I concur in this stipulation and order.

DATED this 28 day of December, 1994.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Nicole S. McKay
Nicole S. McKay
Deputy Attorney General

Pursuant to Idaho Code § 54-2914, the foregoing is adopted as the decision of the Idaho State Board of Hearing Aid Dealers and Fitters in this matter and shall be effective on the 11th day of January, 1995, IT IS SO ORDERED.

IDAHO STATE BOARD OF HEARING AID
DEALERS AND FITTERS

By Michael J. Sturmak
Michael J. Sturmak
Chairman

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